

# State of Wisconsin



1997 Senate Bill 459

Date of enactment: April 22, 1998

Date of publication\*: May 6, 1998

## 1997 WISCONSIN ACT 172

AN ACT *to amend* 30.02 (3), 30.02 (4) (a), 80.32 (2), 80.32 (5), 80.41, 236.16 (3) and 236.43 (1) (d); and *to create* 236.16 (3) (d), 236.16 (3) (e) and 236.16 (3) (f) of the statutes; **relating to:** vacating or discontinuing public access to lakes and streams and requiring construction for shoreline erosion control under certain circumstances.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

**SECTION 1b.** 30.02 (3) of the statutes is amended to read:

30.02 (3) Upon receipt of a complete permit application or a request for a determination under s. 236.16 (3) (d), the department shall either schedule a hearing or provide notice stating that it will proceed on the application or request without a hearing if, within 30 days after the publication of the notice, no substantive written objection to issuance of the permit is received ~~within 30 days after publication of the notice or no request for a hearing concerning the determination under s. 236.16 (3) (d) is received~~. The notice shall be provided to the clerk of each municipality in which the project is located and to any other person required by law to receive notice. The department may provide notice to other persons as it deems appropriate. The department shall provide a copy of the notice to the applicant, who shall publish it as a class 1 notice under ch. 985 in a newspaper designated by the department that is likely to give notice in the area affected. The applicant shall file proof of publication with the department.

**SECTION 1c.** 30.02 (4) (a) of the statutes is amended to read:

30.02 (4) (a) If a public hearing is ordered, the division of hearings and appeals shall mail a written notice at least 10 days before the hearing to each person given notice under sub. (3) and in the case of an application for a permit, to any person who submitted a substantive written objection to issuance of the permit.

**SECTION 1m.** 80.32 (2) of the statutes is amended to read:

80.32 (2) Every Except as provided in sub. (5), every highway shall cease to be a public highway at the expiration of 4 years from the time it was laid out, except such parts thereof as shall have been opened, traveled or worked within such time, and any highway which shall have been entirely abandoned as a route of travel, and on which no highway funds have been expended for 5 years, shall be considered discontinued.

**SECTION 2.** 80.32 (5) of the statutes is amended to read:

80.32 (5) Subsection (2) does not apply to state or county trunk highways or to any highway, street, alley or right-of-way that provides public access to a navigable lake or stream.

**SECTION 3.** 80.41 of the statutes is amended to read:

**80.41 Discontinuing ways to waters.** No resolution ~~or ordinance, order or similar action~~ of any town board or county board or committee thereof discontinuing any highway, street, alley or right-of-way ~~which that~~ pro-

\* Section 991.11, WISCONSIN STATUTES 1995-96: Effective date of acts. "Every act and every portion of an act enacted by the legislature over the governor's partial veto which does not expressly prescribe the time when it takes effect shall take effect on the day after its date of publication as designated" by the secretary of state [the date of publication may not be more than 10 working days after the date of enactment].

vides public access to any navigable lake or stream shall be effective until such resolution ~~or~~ ordinance, order or similar action is approved by the department of natural resources.

**SECTION 4c.** 236.16 (3) of the statutes is amended to read:

236.16 (3) LAKE AND STREAM SHORE PLATS. (a) All subdivisions abutting on a navigable lake or stream shall provide public access at least 60 feet wide providing access to the low watermark so that there will be public access, which is connected to existing public roads, at not more than one-half mile intervals as measured along the lake or stream shore except where greater intervals and wider access is agreed upon by the department of natural resources and the department, and excluding shore areas where public parks or open-space streets or roads on either side of a stream are provided.

(b) No public access established under this chapter may be vacated except by circuit court action. ~~This as provided in s. 236.43.~~

(c) ~~Except as provided in par. (d), this subsection does not require any local unit of government to improve land provided for public access.~~

**SECTION 4e.** 236.16 (3) (d) of the statutes is created to read:

236.16 (3) (d) All of the owners of all of the land adjacent to a public access established under par. (a) to an inland lake, as defined in s. 30.92 (1) (bk), may petition the city, village, town or county that owns the public access to construct shoreline erosion control measures. Subject to par. (e), the city, village, town or county shall construct the requested shoreline erosion control measures or request the department of natural resources to determine the need for shoreline erosion control measures. Upon receipt of a request under this paragraph from a city, village, town or county, the department of natural resources shall follow the procedures in s. 30.02 (3) and (4). Subject to par. (e), the city, village, town or county shall con-

struct shoreline erosion control measures as required by the department of natural resources if the department of natural resources determines all of the following:

1. Erosion is evident along the shoreline in the vicinity of the public access.

2. The shoreline erosion control measures proposed by the owners of the property adjacent to the public access are designed according to accepted engineering practices.

3. Sufficient property owners, in addition to the owners of all property adjacent to the public access, have agreed to construct shoreline erosion control measures so that the shoreline erosion control project is likely to be effective in controlling erosion at the location of the public access and its vicinity.

4. The shoreline erosion control project is not likely to be effective in controlling erosion at the location of the public access and its vicinity if the city, village, town or county does not construct shoreline erosion control measures on the land provided for public access.

**SECTION 4g.** 236.16 (3) (e) of the statutes is created to read:

236.16 (3) (e) A city, village, town or county may not be required to construct shoreline erosion control measures under par. (d) on land other than land provided for public access.

**SECTION 4i.** 236.16 (3) (f) of the statutes is created to read:

236.16 (3) (f) Paragraphs (b) to (e) apply to public access that exists on, or that is established after, the effective date of this paragraph .... [revisor inserts date].

**SECTION 5.** 236.43 (1) (d) of the statutes is amended to read:

236.43 (1) (d) All the owners of all the land in the plat or part thereof sought to be vacated and the governing body of the city, village or town in which the street, road or other public way is located have joined in the application for vacation.